

REMARKS

The present Amendment responds to the Office Action dated December 21, 2007. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by March 21, 2008.

In the Office Action, claims 1-14 were pending and claim 12 was withdrawn from consideration pursuant to the Examiner's Restriction Requirement. The Examiner indicated that the claims were examined only to the extent that they read on the elected invention. Applicants previously elected to proceed with Group I, claims 1, 2-11, and 13-14 drawn to a pyrazino ring fused to pyridine, wherein W and Z are N and X and Y are CR8.

In the claim amendments above, the Examiner will note that Applicants have now cancelled withdrawn claim 12 and removed the non-elected subject matter from the remaining pending claims. The formulas in claims 1 and 11 have been amended to replace W and Z with N. In addition, where appropriate, claims depending from independent claim 1 have been amended to remove the recitation of both W and Z.

Turning to the Office Action, the Examiner objected to claims 1 and 11 for containing the term "general". While Applicants believe the use of the term "general" is appropriate and does not render the claim indefinite, the claims have been amended to delete the term therefrom. In addition, claims 1-11, 13, and 14 have been rejected under 35 U.S.C. § 112, second paragraph. More particularly, the Examiner rejected claims 1, 3 and 6-9 for containing the term "especially". Applicants have amended each of these claims to remove this term.

The only outstanding matter remaining in the office action is the provisional double-patenting rejection. Specifically, the Examiner provisionally rejected claims 1-11, 13 and 14 "on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 7-8 in copending Application No. 11/570,984." Applicants respectfully submit that subsequent to the entry of the above-mentioned amendments to the claims, the Examiner can now withdraw this double patenting rejection and allow the present application to issue as a patent without the need for a terminal disclaimer.

MPEP Section 804(I)(B)(1) provides, in part:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that

rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

(MPEP § 804, p. 800-17). Here, co-pending Application No. 11/570,984 was filed with the USPTO on December 20, 2006, which is after the filing date of the present application. A filing receipt has not yet been received in the case, although Applicants have no doubt that the USPTO will accord this application with a § 371 filing date of December 20, 2006. Since the cited patent application, Ser. No. 11/570,984, is the later filed application, and the ODP rejection should be the only rejection remaining in this application after entry of the above-mentioned amendments, Applicants believe that the Examiner is now permitted to withdraw the rejection and allow this case to issue.

Based upon the foregoing then, Applicants submit that the pending claims are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

USPTO Customer No. 26748
Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-6049

/Rebecca A. Howard/
Rebecca A. Howard
Attorney for Applicants
Reg. No. 51,724

Date: February 29, 2008